IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 331 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RANJANBA HARENDRASINH GOHIL

Versus

HARENDRASINH HARVIJAYSINH GOHIL

Appearance:

1. Criminal Revision Application No. 331 of 2003

MS SM AHUJA for Petitioner No. 1

MR RJ OZA for Respondent No. 1-3

MR KP RAVAL APP for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 15/12/2004

ORAL JUDGEMENT

1. Rule. Mr. R.J. Oza, learned advocate waives service of Rule on behalf of the respondents No.1 to 3.

Mr. K.P. Raval, learned A.P.P. waives service of Rule on behalf of the respondent No.4 State.

2. The present revision application is preferred against the order passed by the 2nd Joint J.M.F.C., Bhavnagar in Criminal Case No. 2815 of 1996 dated 31-3-2003, whereby the respondent Nos.1 to 3 were acquitted of the offences punishable u/s 6 and 7 of the Dowry Prohibit Act, 1961 and u/s 498A of the I.P. Code.

3. The respondent no. 4 - State has not preferred any appeal against the aforesaid acquittal order passed by the trial Court.

4. I have heard the learned advocate for the applicant, learned advocate for the respondent Nos.1 to 3 and the learned A.P.P. for the respondent no.4.

5. The case of the present applicant - complainant is that the present applicant had married with the respondent no. 1 on 6-2-1985. Thereafter, the present applicant was having a female child out of the wedlock between the present applicant and the respondent no.1. Subsequently, the applicant had returned to her parental house from 30-5-1990 and since then the present applicant was residing with her parents and not at the house of her husband - respondent No. 1. After five years, the complaint was filed on 22-9-1995 by the present applicant before 2nd J.M.F.C., Bhavnagar for demand of dowry and harassment by the husband i.e. the respondent No.1 and his relatives. Divorce petition has also been filed by the respondent no.1 against the present applicant in October, 1995. It is alleged by the present applicant that the respondent Nos.1 to 3 were demanding the dowry and were also imparting physical and mental cruelty to the applicant and for that the complaint was filed in the year 1995.

6. Thereafter, the case was inquired into by the Police Officer upon the order passed by the trial Court u/s 156 of the Code of Criminal Procedure, 1973 and the charge sheet was filed against the respondent Nos.1 to 3.

7. The evidence of the present applicant was recorded at exh.27. Deposition of the father of the present applicant is recorded at Exh.32 and two witnesses have also been examined by the complainant namely Anopsinh Sajubha Exh.36 and Amarsinh Bhikhubha Exh.37. Two panch witnesses have also been examined at exh.38 and 40. Panchnama is produced at Exh.39. Thereafter, two more witnesses were examined by the complainant namely

Jayvantsinh Ravubha at exh.41 and Keshavbhai Tejabhai at Exh.45.

8. Learned advocate for the applicant has pointed out that the trial Judge has not properly appreciated the deposition of the present applicant at Exh.27 and the deposition of father of the applicant at Exh. 32. It is also submitted by the learned advocate for the applicant that from the deposition of the present applicant and her father, it is proved that the respondent Nos.1 to 3 were demanding dowry and they were imparting physical and mental cruelty to the present applicant. This is how the offences punishable u/s 6 and 7 of the Dowry Prohibition Act, 1961 and u/s 498A of the I.P. Code has taken place. This aspect of the matter has not been appreciated by the trial Court and therefore the order passed by the trial Court deserves to be quashed

9. It is submitted by the learned advocate for the applicant there were two letters dated 5-3-1990 and 23-5-1990 written by the present applicant to her father whereupon the father of applicant took custody of the applicant from the house of the husband of the applicant. These two letters corroborate the say of the present applicant as to demand of dowry and physical and mental cruelty imparted by the respondent Nos.1 to 3. Learned trial Judge has also not appreciated the deposition of Anopsinh Sajubha Exh.36 and deposition of Amarsinh Bhikhubha Exh.37. The depositions of these two witnesses make it implicitly clear that there was demand of dowry and physical and mental harassment by the respondent Nos.1 to 3. It is also submitted by the learned advocate for the applicant that several items were given in dowry at the time of marriage ceremony of the present applicant with the respondent No.1 and the same have not been returned to the present applicant and this also tantamounts to cruelty. The learned trial Judge has also not appreciated this aspect of the matter and therefore the order passed by the trial Court deserves to be quashed and set aside. Learned advocate for the applicant has relied upon the following authorities in support of her case.

i. (1991) 1 SCC 371
ii. 1992 Criminal Law Journal 111
iii. AIR 1994 SC 1418
iv. 1995 Criminal Law Journal 340
v. AIR 1999 SC 1491
vi. AIR 1999 SC 2071

10. Learned A.P.P. for the State submitted that no appeal is preferred by the State against the order passed

by the trial Court. None the less, he has adopted the arguments advanced by the learned advocate for the applicant and submitted that the order passed by the trial Court is just, legal and correct and does not required to be interfered with by this Court.

11. Learned advocate for the respondent Nos.1 to 3 mainly submitted that there is no infirmity, illegality or error of facts or error of law in the order passed by the trial Court. There is neither perversity nor jurisdictional error in the order passed by the trial Court. On the contrary, the order of the trial Court is true, correct and in consonance with facts and law and is passed on proper appreciation of the depositions of the witnesses and evidence on record and requires no interference by this Court in exercise of revisional jurisdiction conferred upon this Court. Learned advocate for the respondent Nos.1 to 3 submitted that the marriage of the present applicant with the respondent no.1 was solemnized in the year 22-6-1985 and there was birth of child, out of wedlock between the applicant and the respondent No. 1. He has also submitted that the father of the applicant took custody of the applicant on 30-5-1990 and at much belated stage i.e. on 27-9-1995 before the J.M.F.C., Bhavnagar allegations of demand of dowry and physical and mental harassment by the respondent Nos.1 to 3 were made by the applicant. Time gap lapsed from 30-5-1990 since when the present applicant was residing at her parental house continuously and 22-9-1995 i.e. date of the complaint is so much that it creates bar to take cognisance by the trial Court as per the provisions of Section 468 of the Code of Criminal Procedure more particularly Section 468 (2) (c) of the Code of Criminal Procedure, 1973. It is submitted by the learned advocate for the respondent Nos.1 to 3 that imprisonment for the offence punishable u/s 6 and 7 of the Dowry Prohibition Act, 1961 is provided for maximum two years whereas sentence is provided for the offence punishable u/s 498A of the I.P. Code is three years. He has also submitted that as per the provisions of Section 468 of the Code of Criminal Procedure, period of limitation is three years. In the present case, admittedly the complaint - present applicant was residing at her parents' house on and from 30-5-1990 and the complaint was filed at much belated stage i.e. on 22-9-1995 i.e. after period approximately period of 5 years and 4 months. The applicant has alleged as to demand of dowry and physical and mental cruelty imparted by the respondent Nos.1 to 3 which creates statutory bar for the trial Court in taking cognizance. Apart from this aspect of the matter, it is vehemently argued by the

learned advocate for the respondent Nos.1 to 3 that there was no demand of dowry by the respondent Nos.1 to 3 but at the time of marriage ceremony whatever articles were given by the parents of the complainant have been returned and this fact has also been admitted by the complainant in her deposition at Exh.27 and this aspect of the matter has also been discussed in paragraph No. 7 of the order passed by the trial Court.

12. It is also contended by the learned advocate for the respondent Nos. 1 to 3 that the letters which are produced by the complainant at the time of her deposition were never given to the police at the time of investigation of the offence. No witness from the post office has been examined by the prosecution and therefore the said letters cannot be relied upon and the said letters were never the part and parcel of the record of investigation of the case. Looking to the deposition of the complainant, several factual aspects of the matter have been mentioned by the complainant, e.g. example the present applicant made complaint before the Mahia Institution but when she was asked to produce the copy of the said complaint during her cross-examination, she has categorically stated that she does not want to produce the copy of the said complaint. Similarly, the complainant has stated that the notice for demand of certain dowry items from the present respondent No. 1 was given but the said notice was not produced by the complainant before the Court. It is also stated by the present applicant in her deposition about physical and mental harassment or cruelty exercised by the respondent Nos. 1 to 3, she has never filed any complaint prior to September, 1995 and after lapse of period of about 5 years and 4 months, the present complainant has preferred the complaint as to demand of dowry and physical and mental harassment imparted by the respondent Nos.1 to 3.

13. Falsehood in the deposition of the complainant is of higher decree than that of truth and is so interwoven that rest of the part of the deposition leads to a conclusion that the complainant is not reliable and trustworthy witness for proving the offences as alleged by the prosecution. In the same manner, the father of present complainant namely Dilavarsinh Dansinh Exh.32 has categorically stated that his daughter i.e. present applicant was residing with him since last more than a decade and he has taken custody of the complainant with effect from 30-5-1990. Thus, on and from 30-5-1990 the present complainant had never gone to the house of the respondent No. 1 i.e. the husband of the present applicant. The complaint was filed on 22-9-1995 alleging

that prior to 30-5-1990 there was demand of dowry and there was physical and mental harassment at the behest of, the respondent Nos. 1 to 3.

14. The complainant has also examined Anopsinh Sajubha at Exh.36 and from his deposition Exh.36 nothing against the respondent Nos. 1 to 3 is coming out save and except general allegations without any further details and accuracy. It has been stated by the said witness Exh.36 that the complainant was facing some difficulties after the marriage and there is nothing further than this. Therefore, the said deposition of the said witness Exh.36 is not useful and helpful to the complainant to prove the allegations made against the respondent Nos. 1 to 3 regarding demand of dowry and physical and mental harassment by the respondent Nos. 1 to 3.

15. The complainant has also examined witnesses Amarsinh Bhikhubha at Exh. 37. This witness states in his deposition Exh.37 that the father of the complainant and this witness Exh.37 were serving together in the Custom Department and there was no talk between him and the father of the complainant Exh.36 in respect of the complainant. The said witness Exh.37 has also deposed that subsequently the father of the complainant had stated that Ranjanba daughter of the witness Exh.36 is not happy, but, reason for her unhappiness was never given or conveyed to him. Therefore, the witness Exh.37 is a hearsay witness and rightly not believed by the trial Court.

16. In the same way, panch witness Amarshibhai Ramjibhai Exh.38 has stated that there was a ready made panchnama at the police station prepared by the police and he had signed the same. Similarly, another panch witness Haresh Vinodray has been examined at Exh. 40 who also corroborates the say of panch witness Exh.38 by stating that when he signed the panchnama at the police station it was a ready made panchnama and he was not aware as to the contents of the panchanama Exh.39. Thus the panchnama Exh.39 is not proved in accordance with law.

17. Thus, looking to the cumulative effect of the depositions of the aforesaid witnesses including the complainant, the charges levelled against the present respondent Nos. 1 to 3 as to demand of dowry and physical and mental harassment imparted by the respondent Nos. 1 to 3 have not been proved and the conclusion arrived at by the trial Court is true, correct and in

consonance with facts and law after proper evaluation of the overall effect of all the depositions of the witnesses examined by the prosecution. The view taken by the trial Court is not such that it requires to be quashed and set aside. On the contrary, second view is not possible from what is taken by the trial Court and therefore the present revision application preferred by the present applicant deserves to be dismissed. The State has accepted the judgment and order of the trial court. In support of his arguments, learned advocate for the respondent Nos. 1 to 3 has relied upon the following judgments :

i. AIR 1951 SC 196
ii. AIR 1951 SC 316
iii. AIR 2000 SC 297

It is submitted by the learned advocate for the respondent Nos. 1 to 3 that the aforesaid first judgment has also been followed in the subsequent years i.e. (1968) 2 SCR 287, (1975) 3 SCC 398 and (1978) 1 SCC 27.

18. Depositions of the witnesses examined by the complainant have been read over by the learned advocates for the applicant and the respondents No. 1 to 3. Looking to the depositions of the aforesaid witnesses examined by the complainant, documents on record and the facts of the case, the judgment and order passed by the trial Court is true, correct and in consonance with the facts and law especially for the following reasons :

(i) It is an undisputed fact that the marriage between the present applicant and the respondent No. 1 had solemnized on 6-2-1985 and thereafter there was birth of a child and subsequently on 30-5-1990 the complainant had gone go reside at her parental house and thereafter she has never returned to her matrimonial house i.e. the house of the respondent no. 1. Thereafter, at much belated stage, after lapse of period of five years and four months, on 22-9-1995 the complainant - the present applicant, had filed complaint before the J.M.F.C., Bhavnagar alleging therein, for the first time, regarding demand of dowry and physical and mental harassment by the respondent Nos. 1 to 3 after the marriage from 6-2-1985. From 6-2-1985 till filing of the complaint i.e. 22-9-1995, no complainant has been filed by the complainant - present applicant either before Mahila Institution or before any Court of law or before any police station. The

allegations of demand of dowry and mental and physical harassment by the respondent Nos.1 to 3 are coming forth for the first time on 22-9-1995 after residing at her parental house.

(ii) Time gap between 30-5-1990 and 22-9-1995 creates bar in taking cognisance by the trial Court u/s 468 of the Criminal Procedure Code, 1973. Relevant provisions of Section 468 (2) (c) of the Code of Criminal Procedure, 1973 reads as under :

"Bar to taking cognizance after lapse of the period of limitation :468 (2) (c): The period of limitation shall be-

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

Maximum punishment for the offences punishable u/s 6 and 7 of the Dowry Prohibition Act, 1961 is maximum for 2 years whereas maximum punishment for the offence punishable u/s 498A of the I.P.Code is three years and therefore upon conjoint reading of the Section 468 (2) (c) of the Code of Criminal Procedure Code which provides period of limitation of three years and it creates bar to take cognisance by the trial Court. Reason for delay caused in filing the complaint has neither been explained in the complaint nor in the deposition of the complainant herself.

(iii) From the deposition of the complainant Exh.27. it is clear that the complainant had never gone to the house of the respondent no.1 - her husband from May, 1990. The complainant has admitted in her deposition Exh. 27 that items which were given at the time of her marriage by her father and relatives have already been returned to her. There is no allegation in the complaint much less in her deposition that there was demand of dowry at the time her marriage and therefore several items were compelled to be given by her parents and relatives. The items which were narrated in the complaint were voluntarily given by her father and relatives at the time of her marriage. Marriage is dated 6-2-1985. She started residing with her father from 30-5-1990. In between this

period no F.I.R. is filed by the complainant for demand of dowry. But the complaint is filed on 22-9-1995. The complainant has also stated in her deposition Exh. 27 that she had made complaint before Mahila Institution with regard to the demand of dowry and physical and mental harassment given by the respondents no.1 to 3. But in her cross-examination, the complainant has refused to produce the copy of the complaint made by her before Mahila Institution. Similarly, the complainant has stated that she has taken treatment of Doctor but she has failed to give the name of the Doctor and address of the Doctor from whom she has taken treatment. It is also stated by the complainant in her deposition that the notice was given by her to the respondents No. 1 to 3 for return of dowry items, but no such notice has ever been produced before the Court and what is produced at Exh.28 and 29 are two letters referring demand of dowry and physical and mental cruelty exercised by the respondents No. 1 to 3 and the said letters Exh.28 and 29 were not presented or produced by the complainant before the police at the time of investigation of the case. For the first time, they were produced in the Court. The embroidery of falsehood is difficult to segregate and is so interwoven that makes the deposition of the complainant, weaker. Of course, "falsus in uno, falsus in omnibus" is not applicable but it is difficult, to segregate chaff from the grain. The fact remains that the complainant had never returned to the house of the respondent no. 1 from May, 1990 and no complaint has ever made, before the police or before the Court or before Mahila Institution as narrated in her deposition Exh.27 as to demand of dowry or physical and mental harassment given by the respondents No. 1 to 3. Several items, given by the father and relatives of the complainant at the time of her marriage, have already been returned to her.

(iv) The letters which are produced at Exh.28 and 29 are coming before the Court, for the first time, from the custody of the complainant. The letters Exh.28 and 29 have never been given to the police at the time of investigation of the case and those letters are not forming part and parcel of the charge sheet no witnesses from postal department is examined, and therefore the trial Court has not relied upon those letters Exh. 28

and 29.

(v) Deposition of the father of the complaint Exh.32 refers the fact that his daughter had returned to his house from 30-5-1990 and thereafter the complainant has never gone to her matrimonial house i.e. the house of the respondent no.1. Thereafter, for the first time in September 1995, the complaint was filed by his daughter. As per Section 468 (2) (c) of the Code of Criminal Procedure, 1973, the complaint given by the complainant is time barred.

(vi) The witnesses examined at Exh.36 and 37 have no information as to any demand of dowry or physical and mental harassment given by the respondents No. 1 to 3 as alleged by the complainant. Both the panch witnesses Exh. 39 and 40 have stated that at the police station they have signed the ready made panchanama and they were not aware about the contents of the said panchanama.

(vii) Police witness Exh.41 has stated that in 1995 he had filed the charge sheet and investigation of the case was conducted by other Police Sub-Inspector. Looking to the deposition of these witnesses and the facts and circumstances of the case, the conclusion arrived at by the trial Court that the complainant or prosecution has failed to prove beyond reasonable doubt the offences alleged against the present respondents no. 1 to 3 as well as the conclusion as to complaint as time barred is true, correct and consonance with facts and law and second view is not possible by any stretch of imagination looking to the depositions of the aforesaid witnesses and documents on record. Therefore, I see no reason or ground to take any deviation from the conclusion arrived at by the trial Court, as the same is true, correct, proper and in consonance with facts and law. The order passed by the court below, requires not to be revised, as held in the case of D. Stephens Vs. Nosibolla, reported in A.I.R. (88) 1951 SC 196, at paragraph No.10, it has been held as under :

"Para 10 - The revisional jurisdiction conferred on the H. C. under S. 489, Criminal P.C., is not to be lightly exercised, when it is invoked by a private complaint against an order of

acquittal, against which the Govt. has a right of appeal under S. 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower Ct. has taken a wrong view of the law or misappreciated the evidence on record. As already pointed out, there has been no such error in the present case, on the other hand, it seems to us that on both the previous occasions, the learned Chief Presidency Mag. was right in holding that the accused was not guilty of any offence under Ss. 25 and 26, Merchant Shipping Act."

Scope of revision has been referred to in the aforesaid judgment as has been followed in several subsequent judgments and looking to the ratio of the aforesaid case, there is no substance in the present revision application.

(viii) In the case of State of Himachal Pradesh Vs. Tara Dutt and another, reported in AIR 2000 SC 297, at paragraphs No. 5 and 7 the Hon'ble Supreme Court has held as under :

"Para 5 - The pain and unambiguous language of the aforesaid provision of the Code of Criminal Procedure makes it crystal clear that under sub-section (2) (a) of S.. 468 where the offence for which the accused is charged is punishable with fine only, the prosecution must be launched within six months from the date of commission of the offence. Similarly, under sub-section (2) (by) of S. 468, the period of limitation is one year if the offence is punishable with imprisonment for a term not exceeding one year and under sub-section (2) (c) of the said Section where the offence charged is punishable with imprisonment for a term exceeding one year but not exceeding three years, then the period of limitation provided is three years for taking cognizance, Sub-section (3) of Section 468 which was added by the Code of Criminal Procedure (Amendment) Act, 1978, provides that in relation to offences which may be tried together, the

period of limitation shall be determined with reference to the offence which is punishable with more or most severe punishment. The language of sub-section (3) of S. 468 makes it imperative that the limitation provided for taking cognizance in S. 468 is in respect of the offence charged and not in respect of offence finally proved. This being the position, the case in hand, when the respondents were charged under S. 468 read with S. 120-B, for which the imposable punishment is seven years and S. 5 (2) of the Prevention of Corruption Act, 1947, which is punishable with imprisonment for a term which may extent to seven years and for such offences no period of limitation having been provided for in S.468, the cognizance taken by the learned Special Judge cannot be said to be barred by limitation. The High Court in recording its conclusion relied upon the decision of this Court in the case of State of Punjab Vs. Sarwan Singh (1981) 3 SCC 34: AIR 1991 SC 1054: 1981 Cr. L.J. 722. In the said case, the respondent was charged under S. 406 for misappropriation. The challan was presented on October 13, 1996 and therein it was clearly mentioned that the offence was committed on August 22, 1972. The learned trial Judge acquitted the accused of the charges under S.468 but convicted him of the charge under S.406 of the Code of Criminal Procedure. This Court came to the conclusion that since the charge sheet itself mentions that the offence was committed on August 22, 1972, the cognizance was barred under S.468 (2) (c) of the Code. At the out set it may be stated that in the aforesaid case the Court had not considered the provisions of sub-section 3 of S.468 which was in fact not there on the statute book when the alleged offence was held to have been committed. But in view of the provisions of Sub-section (3) of S.468 which we have already considered this decision will be of no application and the High Court committed error in relying upon the aforesaid decision to come to the conclusion that in the case in hand the cognizance itself was barred by limitation.

Para 7 - Section 473 confers power on the court taking cognizance after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and that it is

> necessary so to do in the interest of justice. Obviously, therefore in respect of the offences for which the period of limitation has been provided in S.468, the power has been conferred on the Court taking cognizance to extend the said period of limitation where a proper and satisfactory explanation of the delay is available and where the court taking cognizance finds that it would be in the interest of justice. This discretion conferred on the court has to be exercised judicially and on well recognized principles. This being a discretion conferred on the court taking cognizance, whereever the court exercises this discretion, the same must be by a speaking order, indicating the satisfaction of the court that the delay was satisfactorily explained and condonation of same was in the interest of justice. In the absence of a positive order to that effect it may not be permissible for a superior court to come to the conclusion that the court must be deemed to have taken cognizance by condoning the delay whenever the cognizance was barred and yet the court took cognizance proceeded with the trial of the offence. But the provisions are of no application to the case in hand since for the offences charged, no period of limitation has been provided in view of imposable punishment thereunder. In this view of the matter, we have to hesitation to come the conclusion that the High Court committed serious error in holding that the conviction of two respondents under S.417 would be barred as on the date of taking cognizance, the court could not have taken cognisance for the said offence. Needless to mention, it is well settled by a catena of decisions of this Court that if an accused is charged of a major offence but is not found guilty thereunder, he can be convicted of a minor offence if the facts established indicate that such minor offence has been committed."

18. It is made clear by the Hon'ble Apex Court that after the expiry of period of limitation discretion vested in the court must be exercised by a speaking order. In absence of a positive order (extension of limitation) the Court cannot deemed to have taken cognizance by condoning the delay whenever the cognizance was barred. In the present case, period of limitation is three years and the complaint was filed after five years and four months. But no explanation has been given,

neither in the complaint nor in the deposition of the witnesses nor there is in separate order by the Court. As per Section 473 of the Code of Criminal Procedure, 1973 is to be read with the ratio laid down by the Hon'ble Apex Court in the aforesaid judgment. Apart from limitation, even on merits as discussed, hereinabove, witness-wise, I am not inclined to take any deviation, from the conclusion reached by the trial Court as the same is true and correct and in consonance with facts and law.

19. In view of the aforesaid facts and circumstances of the case and evidence on record, there is no substance in this revision application. Accordingly, the present Criminal Revision Application is dismissed. Rule is discharged.

(D.N. Patel, J.)

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